

## **§ 1789.154**

to the funding of consultant services for RUS.

### **§ 1789.154 Eligible borrowers.**

All Borrowers are eligible to fund consultant services under this part.

### **§ 1789.155 Approval criteria.**

RUS will consider approving the use of consultant services funded by a Borrower on a case by case basis taking into account, among other matters, the following:

(a) Whether such services are required to facilitate timely action on a Borrower's Application. RUS shall determine what represents timely action with respect to each Application considering, among other matters, the review period normally required for such projects by RUS and other lenders and the consequences to the Borrower of adjusting the review period.

(b) The availability of staff resources, the priorities of other projects then before RUS, and the efficiencies to be realized from the use of consultant services.

(c) Whether it is in the best interest of RUS to use Borrower-funded Consultants. Certain types of projects, such as those involving issues of program-wide significance, may not be well suited for the use of Borrower funded Consultants.

### **§ 1789.156 Proposal procedure.**

(a) In the event RUS determines that consideration should be given to the use of a Borrower-funded consultant in connection with the review of an Application, the RUS Regional Director or the Director of the Power Supply Division, as appropriate, will discuss with the Borrower the nature of the Application and the projected review period required of RUS. If RUS concludes that the projected review period will not result in timely action on the Application, and after being so notified in writing by RUS the Borrower wishes to fund consultant services to facilitate RUS review, the Borrower shall submit to the same Director a funding proposal. The proposal shall set forth the following:

(1) Identification in the heading or caption as a Notice of Proposal to Fund Consulting Services;

(2) Borrower's REA/RUS designation;

(3) Borrower's legal name and address;

(4) A description of the Application, critical issues and concerns relating to the Application, time deadlines, and the consequences of any delays in RUS review;

(5) A description of the consulting service(s) that would facilitate timely RUS review of the Application; and

(6) Such additional documents and information as RUS may request.

(b) RUS will review the Notice of Proposal to Fund and any additional information RUS deems relevant in determining whether to proceed with procuring Borrower funded Consultants. If RUS proposes to utilize Legal Consultants, RUS must obtain the concurrence of the Office of General Counsel (OGC) of the Department of Agriculture. RUS will notify the Borrower in writing of its determination.

### **§ 1789.157 Consultant contract.**

(a) The Federal Acquisition Regulation (FAR), 48 CFR Ch. 1, and the Agriculture Acquisition Regulation (AGAR), 48 CFR Ch. 4, shall apply to all Consultant Contracts entered into pursuant to this part except as provided in this section.

(1) Contracts for Legal Consultants shall provide for a technical representative from OGC.

(2) All Consultant Contracts shall provide for an escrow account funding mechanism pursuant to this part and for the government's sole discretion in determining whether payments are to be made from the Escrow Account to the Consultant.

(3) All Consultant Contracts shall provide that payment of all obligations for work performed thereunder must be satisfied by amounts available in the Escrow Account; with the exception of the annual retainer fee, if any, Consultants shall not be entitled to any payments from the government.

(b) The provisions of paragraph (a) of this section shall be given prominent emphasis in requests for proposals issued under this part.

### **§ 1789.158 Implementation.**

(a) Upon making a determination to go forward with Borrower funding for